IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/09/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION No.15304 OF 2001

Dayanidhi .. Petitioner

-Vs-

The Government of Tamil Nadu
rep. by its Secretary,
Labaour and Employment Department,
Fort St.George,
Chennai-9. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of mandamus as stated therein.

For petitioner : Mr.D.Hariparanthaman

For respondent : Mrs.V.Velumani-AGP

:O R D E R
This writ petition has been filed by the petitioner praying to issue a writ of mandamus, directing the respondent to refer the Industrial Dispute regarding the denial of promotion to the post of Junior Engineer for petitioner for adjudication by the Industrial Tribunal.

2. The case of the petitioner is that he joined the Thanthai Periyar Transport Corporation as Electrician in Technical side in 1979 at Thirupathur Depot; that the said Depot was taken over by the Pattukottai Azhagiri Corporation in the year 1982; that thereafter, he was working in Pattukottai Azhagiri Transport Corporation as Junior Trasdesman; that the required qualification for Junior Tradesman is only I.T.I.; that he is a diploma holder in Electrical Engineering; that in 1987 the management sent a circular to all Depots directing the Diploma Holders to make application for promotion to the post of Junior Engineer and accordingly the petitioner has applied for the said post.

3. The further case of the petitioner is that he has attended the interview on 14.11.1987, but he was not selected; that on the other hand his juniors Mr.Panneerselvam and Mr.Kotti were selected and promoted to the post of Junior Engineer; that in fact Mr.Kotti did not even attend the

interview as he had not received interview the card since he did not possess qualification at the relevant time; that the petitioner's Union raised an Industrial Dispute before the Conciliation Officer questioning the denial of promotion to him and the same was negatived by the Conciliation Officer by report dated 20.11.1990; that the Government passed the order in G.O.Ms.No.241, Labour and Employment Department, dated 8.3.1991, declining to refer the Industrial Dispute for adjudication by the Labour Court.

4. The further case of the petitioner is that the petitioner's union filed a Writ Petition in W.P.No.5679 of 1991 praying to quash the order of the Government and to direct the respondent to refer the Industrial Dispute for adjudication by the Labour Court; that this Court by an order dated 15.10.1998 made in W.P.No.5679/1991 has quashed the order of the Government further directing to refer the Industrial Dispute for adjudication by the Labour Court; that since the respondent did not comply with the order of this Court, he filed contempt application No.31/2000 praying to punish the respondent, but the said contempt application was dismissed by this Court on 24.1.2000 on ground that there was a delay of one year in filing the said contempt application. In such circumstances, the petitioner has come forward to file this writ petition praying for the relief extracted supra.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Writs) as well and the materials placed on record have also been perused.

6. During arguments, the learned counsel for the petitioner besides reiterating the facts pleaded in the affidavit in support of the above writ petition would also cite a decision reported in 2004(3)L.L.N. 322 (MGR TRANSPORT CORPORATION EMPLOYEES' UNION V. STATE OF TAMIL NADU AND OTHERS) wherein in a similar fact situation this Court has held:
"It is settled proposition of law that the Government has little or no discretion in the matter of reference of disputes before the Labour Court except in rare cases where a claim of the worker is glaringly frivolous or repeated references are sought to be made on the same issue. The question as to whether the dispute raised by the worker is justified or not is a matter for the Labour Court and not to be rejected by the Government at the stage of reference. When such is the legal position, it is a matter of regret and surprise that there could be a printed format for rejection (not making reference). Right to have the dispute adjudicated by the Labour Court is a basic right of the employee and such a right cannot be rejected at the threshold by the Government."
Citing the above decision, the learned counsel would pray to allow the above writ petition.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is able to assess that the respondent has refused to refer the Industrial Dispute between the petitioner the management for adjudication by the Labour Court. Further, this Court is able to assess that the the writ petition filed by the petitioner's union for the same relief has been allowed by this Court by order dated 15.10.1998 made in W.P.No.5679/1991 thereby the

very same order of the respondent has been quashed, further directing to refer the Industrial Dispute for adjudication by the Labour Court. Even after the receipt of the order of this Court, the respondent did not refer the Industrial Dispute for adjudication by the Labour Court. The decision cited by the learned counsel for the petitioner squarely applies to the present case.

8. Considering all the above facts and circumstances, this Court is of the view that it is a fit case to direct the respondent to refer the Industrial Dispute regarding the denial of promotion to the post of Junior Engineer to the petitioner for adjudication by the Industrial Tribunal and hence the following order:
In result,
(i) the above writ petition succeeds and the same is allowed;
(ii) the respondent is directed to refer the Industrial Dispute regarding the denial of promotion to the post of Junior Engineer to the petitioner for adjudication by the Industrial Tribunal within a period of one month from the date of receipt of a copy of this order;

(iii) however, in the circumstances of the case, there will be no order as to costs.

Index:Yes
Internet:Yes

gr.

To
The Government of Tamil Nadu
rep. by its Secretary,
Labaour and Employment Department,
Fort St.George, Chennai-9.

□